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## The Future of Ad Hoc Tribunals: An Assessment of Their Utility Post-ICC

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# THE FUTURE OF AD HOC TRIBUNALS: AN ASSESSMENT OF THEIR UTILITY POST-ICC

Milena Sterio\*

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## I. INTRODUCTION

Over the past two decades, various mechanisms of international and regional justice have developed. The proliferation of international courts, hybrid tribunals, domestic war crimes chambers, truth commissions, civil compensation commissions, and other tools of accountability has sparked an academic debate over the usefulness of any such mechanism for redressing past violations of international law.<sup>1</sup> This Article will briefly discuss some of the best-known mechanisms of international, national, and “hybrid” justice, and will assess their role in light of the creation and existence of the International Criminal Court (ICC), the only permanent tribunal in international criminal law. Does international justice have a place for *ad hoc* tribunals, other than the ICC? With the relative successes of the ICC, will there be a need for additional *ad hoc* tribunals in the future? Or, will the ICC replace the need for any additional justice mechanisms and thus foreclose any future discussions over the establishment of *ad hoc* international, regional, or hybrid tribunals?

## II. RECENT TRIBUNALS: FROM NUREMBERG TO THE 21<sup>ST</sup> CENTURY

At the end of World War II, victor countries established the famous Nuremberg Tribunal, where the most prominent leaders of the Nazi regime

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1. Laura A. Dickinson, *The Promise of Hybrid Courts*, 97 AM. J. INT’L L. 295 (2003); *See generally*, Milena Sterio, *Seeking the Best Forum to Prosecute International War Crimes: Proposed Paradigms and Solutions*, 18 FLA. J. INT’L L. 887 (2006); *see generally*, David Tolbert, *International Criminal Law: Past and Future*, 30 U. PA. J. INT’L L. 1281 (2009).

were prosecuted for war crimes, “crimes against humanity,” and crimes against peace.<sup>2</sup> Nuremberg has been widely considered a catalyst for more modern-day tribunals, dedicated to the pursuit of international criminal justice.<sup>3</sup> Recent tribunals fall into three broad categories: International tribunals, hybrid tribunals, and internationalized or internationally-supported domestic chambers.<sup>4</sup>

#### A. *International Tribunals*

Three different international tribunals have been established over the last two decades: The International Criminal Tribunal for Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the ICC.<sup>5</sup> All three tribunals are considered international because they employ international judges, prosecutors, registrars, and defense attorneys. They apply international law to any case before them and they function independently of any national jurisdiction.<sup>6</sup>

The ICTY and the ICTR are *ad hoc* tribunals, created to deal with specific conflicts in the former Yugoslavia and Rwanda with limited temporal and geographic jurisdictions.<sup>7</sup> Both the ICTY and the ICTR are expected to wind down and complete their operations within the next decade.<sup>8</sup> Both of these tribunals were created through the United Nations Security Council’s Chapter VII powers, as a tool for the reestablishment of international peace and security in the Balkans and Rwanda.<sup>9</sup> Both of these tribunals function independently of existing national courts in the former Yugoslavia and Rwanda, and both of these tribunals take primacy over any national prosecutions.<sup>10</sup> In fact, only those cases that the ICTY and ICTR

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2. Tolbert, *supra* note 1, at 1283–84 (discussing the establishment of the Nuremberg tribunal).

3. *Id.*

4. See generally, *id.*

5. Marieke L. Wierda, *What Lessons Can be Learned from the Ad Hoc Tribunals?*, 9 U.C. DAVIS J. INT’L L. & POL’Y 13, 13–14 (2002) (noting the establishing of the International Criminal Tribunal for Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR)); Lindsey Raub, *Positioning Hybrid Tribunals in International Criminal Justice*, 41 N.Y.U. J. INT’L L. & POL. 1013, 1015 (2009) (noting the creation of the International Criminal Court (ICC) in 2002).

6. See Tolbert, *supra* note 1, at 1286–87 (describing the advantages and disadvantages of international tribunals).

7. *Id.* at 1286.

8. Security Council Report, August 2008 Monthly Forecast, [http://www.securitycouncilreport.org/monthly-forecast/2008-08/lookup\\_c\\_gIKWLeMTIsG\\_b\\_4374795.php?print=true](http://www.securitycouncilreport.org/monthly-forecast/2008-08/lookup_c_gIKWLeMTIsG_b_4374795.php?print=true) (last visited Feb. 18, 2013).

9. Raub, *supra* note 5, at 1018.

10. *Id.* (noting that both of these tribunals “were given primacy over national courts.”).

reject can be handed down for prosecution at the national level.<sup>11</sup> Much academic debate has already occurred over the impact, role, and usefulness of these Tribunals.<sup>12</sup> While scholars disagree about these issues, it is indisputable that these Tribunals have contributed to the development of international criminal law. Their future utility, however, remains limited because of their mandatory completion strategy and their inability to extend jurisdiction over other geographic areas.<sup>13</sup>

The ICC Statute was negotiated in 1998; the Court became operational in 2002 and has investigated seven cases and situations since its inception.<sup>14</sup> The ICC is the only permanent international criminal court.<sup>15</sup> It has jurisdiction over genocide, crimes against humanity, and war crimes.<sup>16</sup> It will potentially have jurisdiction over the crime of aggression in 2017, if a sufficient number of state parties ratify the appropriate amendments to the existing statute.<sup>17</sup> While many have applauded the creation of the ICC as a tremendous development in the field of international criminal law, others have remained skeptical about its ability to accomplish many of the existing goals of international justice.<sup>18</sup> The ICC has limited resources and can only prosecute a handful of cases.<sup>19</sup> Its jurisdiction is limited temporally, to 2002 onward, and its ability to hear any case depends on its ability to properly acquire power over a situation—the Court can exercise jurisdiction pursuant to a Security Council referral, pursuant to a referral by a state

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11. Jose Alvarez, *Crimes of States/Crimes of Hate: Lessons from Rwanda*, 24 YALE J. INT'L L. 365, 386 (1999) (noting that under the statutes of the ICTY and ICTR, "at any stage of the procedure the international tribunal may order national courts to defer to its competence and release a suspect to its custody for trial.").

12. See, e.g., Raub, *supra* note 5, at 1017–23; Tolbert, *supra* note 1, at 1285–87; Wierda, *supra* note 5, at 13–17.

13. Security Council Report, *supra* note 8.

14. See, e.g., James F. Alexander, *The International Criminal Court and the Prevention of Atrocities: Predicting the Court's Impact*, 54 VILLA L. REV. 1, 2–3 (2009) (describing the establishment of the ICC); International Criminal Court, Situations and Cases, available at [http://www.icc-cpi.int/en\\_menus/icc/situations%20and%20cases/Pages/situations%20and%20cases.aspx](http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/Pages/situations%20and%20cases.aspx) (last visited Feb. 23, 2013).

15. *Id.* at 2.

16. *Id.*

17. Mauro Politi, *The ICC and the Crime of Aggression: A Dream that Came Through and the Reality Ahead*, 10 J. INT'L CRIM. JUST. 267, 280 (2012).

18. See generally, Tim Curry, *Review of Conference: International Criminal Tribunals in the 21st Century*, 13 NO. 1 HUM. RTS. BRIEF 6 (2005); see generally, Simi Singh, *The Future of International Criminal Law: The International Criminal Court (ICC)*, 10 TOURO INT'L L. REV. 1 (2000).

19. Singh, *supra* note 18, at 9.

party, or pursuant to the prosecutor's decision to initiate an investigation.<sup>20</sup> In some instances, political forces and influences may prevent the Court from investigating a case.<sup>21</sup> Finally, the ICC functions based on the "'complementarity' principle"; it can only exercise jurisdiction if a state is unwilling or unable to prosecute.<sup>22</sup> Thus, national prosecutions have primacy over prosecutions in the ICC, unlike in the case of the ICTY and ICTR, where prosecutions in the *ad hoc* tribunals have primacy over any national prosecution.<sup>23</sup> In some instances, the ICC has been criticized as impeding peace by promoting international justice.<sup>24</sup> For example, in Uganda and Sudan, where the Court has launched investigations, some have argued that its involvement has contributed toward further ethnic conflict and violence, and that other modes of accountability would have been better suited for such volatile situations.<sup>25</sup> Thus, the model of hybrid tribunals has developed as a supplemental mechanism of justice in areas outside of the ICC's reach and in situations where ICC involvement would not be beneficial for a variety of geo-political reasons.<sup>26</sup>

### B. *Hybrid Tribunals*

Hybrid tribunals are courts that combine elements of international and national prosecutions. They employ a mix of international and national judges; they apply both international and domestic criminal laws; they may be located in a host country whose violent past they may be attempting to address; and they strive to fulfill goals of international justice while also helping to promote the growth of the local judiciary, court system, and civil society in general.<sup>27</sup> Recent examples of these hybrid tribunals include the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia (ECCC), the Special Panels for Serious Crimes (SPSC) of the

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20. *Id.* at 8–9 (discussing the limitations of the ICC).

21. *Id.* at 9.

22. Tolbert *supra* note 1, at 1288.

23. *Id.* at 1288–89 (noting that "the ICC is the reverse of the situation of the ICTY and ICTR, which have primacy over local jurisdiction," because of the "complementarity principle.").

24. *Id.* at 1291 ("[I]t is argued that by insisting on the primacy of ICC investigations, peaceful resolutions of disputes can be discourage, as leaders facing war crimes investigations or charges are unlikely to agree to make peace, because they have little incentive to do so.").

25. *Id.*

26. *See generally, id.* at 1285.

27. *See generally, Raub, supra* note 5, at 1023–25.

Dili District Court (East Timor), the Special Tribunal for Lebanon (STL), and the Kosovo Regulation 64 Panels.<sup>28</sup>

The Special Court for Sierra Leone was established in 2002, through an international agreement between the United Nations and Sierra Leone, the host country.<sup>29</sup> The Court has jurisdiction over atrocities that took place in 1996 during Sierra Leone's civil war.<sup>30</sup> It is located in Freetown, the capital of Sierra Leone, but employs a mix of international and local judges.<sup>31</sup> Its statute includes both international law offenses and crimes derived from Sierra Leone, which are specific to the conflict that ravaged this small nation for many years.<sup>32</sup> The most prominent defendant prosecuted in the Special Court is Charles Taylor, the former President of Liberia, who was accused of supporting violent rebel groups in Sierra Leone during the 1990s.<sup>33</sup> Although the Special Court had formulated a firm completion strategy, the tribunal has extended its own existence several times and is, as of today, still operational.<sup>34</sup> Many have described the Court as a model hybrid tribunal. Some scholars have hailed it as a successful model of international justice, which has managed to overcome many short fallings of true international tribunals, like the ICTY or ICTR.<sup>35</sup>

The ECCC was established in 2003, through an agreement between the United Nations Secretary-General and the Cambodian government in order to try the former leaders of the Khmer Rouge regime for atrocities committed between 1975 and 1979 when Pol Pot ruled Cambodia and orchestrated a series of devastating policies, which resulted in the death of almost a third of the country's population.<sup>36</sup> The ECCC is composed of a Pre-Trial Chamber, a Trial Chamber, and a Supreme Court Chamber; all the chambers consist of international as well as Cambodian judges.<sup>37</sup> The Court also has an international and a domestic prosecutor.<sup>38</sup> The Court's

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28. *Id.*

29. *Id.* at 1034.

30. *Id.* at 1035.

31. *Id.* at 1034–35.

32. Statute of the Special Court for Sierra Leone, available at <http://www.sc-sl.org/LinkClick.aspx?fileticket=uClnd1MJEW%3d&tabid=176> (last visited Feb. 23, 2013); Dickinson, *supra* note 1, at 300.

33. Raub, *supra* note 5, at 1035.

34. *Id.* at 1035–36.

35. *See generally, id.* at 1015.

36. *Id.* at 1031–32.

37. *Id.* at 1033.

38. Raub, *supra* note 5, at 1033.

statute is a mix of international and domestic law offenses,<sup>39</sup> similar to the statute of the aforementioned Special Court for Sierra Leone. Since 2009, the ECCC, located in the capital city of Phnom Penh, has prosecuted several high level members of the Khmer Rouge regime.<sup>40</sup> The ECCC is a model hybrid tribunal:

As with the hybrid institutions in Kosovo and East Timor, the weakened state of the Cambodian judiciary from years of civil war and the international nature of the crimes to be prosecuted led the government to believe that international participation was necessary to ensure that the trials met international standards of justice.<sup>41</sup>

Following the East Timorese struggle for independence from Indonesia, during which conflicts between pro-Indonesian militias and pro-independence forces resulted in violence, death, and destruction, the United Nations Transitional Administration for East Timor (UNTAET) established the SPSC to investigate and try cases related to the conflict.<sup>42</sup> The Panels were empowered with jurisdiction over genocide, crimes against humanity, war crimes, torture, sexual violence, and murder (a mix of international and domestic crimes) committed in East Timor between January 1, 1999 and October 25, 1999.<sup>43</sup> The SPSC were staffed with a mix of international and domestic judges and placed within the East Timorese domestic legal system; appeals were also structured to be lodged within the domestic appellate system.<sup>44</sup> Between 2000 and 2005, the SPSC completed fifty-five trials, and in 2005, the United Nations Security Council decided to close down this tribunal, although several investigations were still pending.<sup>45</sup> The UNTAET has provided various forms of assistance to the SPSC over the years,<sup>46</sup> and this Tribunal, like the Special Court for Sierra Leone and the ECCC, represents a model of hybrid justice—a tribunal created within a

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39. Law on the Establishment of the Extraordinary Chambers, with inclusion of amendments as promulgated on 27 October 2004 (NS/RKM/1004/006), available at [http://www.eccc.gov.kh/sites/default/files/legal-documents/KR\\_Law\\_as\\_amended\\_27\\_Oct\\_2004\\_Eng.pdf](http://www.eccc.gov.kh/sites/default/files/legal-documents/KR_Law_as_amended_27_Oct_2004_Eng.pdf).

40. Raub, *supra* note 5, at 1032.

41. *Id.* at 1033.

42. David Cohen, "Hybrid" Justice in East Timor, Sierra Leone, and Cambodia: "Lessons Learned" and Prospects for the Future, 43 STAN. J. INT'L L. 1, 8 (2007).

43. *Id.*

44. Raub, *supra* note 5, at 1030.

45. Cohen, *supra* note 42, at 9.

46. Raub, *supra* note 5, at 1029.

domestic system of a post-war nation assisted by the international community.<sup>47</sup>

The STL was created in 2007 by the Security Council to try persons responsible for assassinations, and those attempted, of prominent Lebanese political and media figures since 2004.<sup>48</sup> In particular, the STL is investigating the assassination of former Prime Minister Rafiq Hariri.<sup>49</sup> Because of security concerns, the STL is located at The Hague, unlike the aforementioned tribunals, which have all been located in host countries.<sup>50</sup> The Tribunal is composed of both international and Lebanese judges, but it will apply Lebanese law.<sup>51</sup> Also, unlike the aforementioned hybrid tribunals, which have jurisdiction over both international and national crimes, the STL has jurisdiction solely over national crimes, as they relate to the Hariri assassination and other assassination attempts.<sup>52</sup> Thus, this Tribunal will not investigate “traditional” international crimes, such as genocide, war crimes, or crimes against humanity, but instead will focus on terrorism.<sup>53</sup> The STL has a three-year mandate, which can be extended by the Security Council upon review.<sup>54</sup> The Tribunal began its work in 2009, and it has already investigated several individuals and issued one indictment.<sup>55</sup> The STL is different from the hybrid tribunals because it was created through the Security Council Chapter VII powers, but contains similarities because its creation was requested by the Lebanese government and because the tribunal employs so many features of domestic Lebanese law.<sup>56</sup>

After years of conflict in Kosovo, the United Nations Missions in Kosovo (UNMIK) “passed several regulations permitting foreign judges to sit alongside domestic judges on existing Kosovar courts and allowing

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47. *Id.* at 1041–43.

48. *See* S.C. Res. 1757, U.N. Doc. S/RES/1757 (May 30, 2007); *see also* International Center for Transitional Justice, Handbook on the Special Tribunal for Lebanon 10, *available at* <http://www.ictj.org/images/content/9/1/914.pdf> (last visited Feb. 18, 2013).

49. Kim Ghattas, Lebanon’s Groundbreaking Tribunal, BBC News, Apr. 21, 2006, *available at* [http://news.bbc.co.uk/2/hi/middle\\_east/4926536.stm](http://news.bbc.co.uk/2/hi/middle_east/4926536.stm) (last visited Feb. 18, 2013).

50. Raub, *supra* note 5, at 1038.

51. *Id.*

52. *Id.* at 1039

53. *Id.* at 1038.

54. *See* S.C. Res. 1757, U.N. Doc. S/RES/1757 (May 30, 2007), art. 21.

55. The Special Tribunal for Lebanon’s pre-trial judge confirmed an indictment in the case of Ayyash et al., STL-11-01, on June 28, 2011, *see* Special Tribunal for Lebanon, The Cases, *available at* <http://www.stl-tsl.org/en/the-cases> (last visited Feb. 18, 2013).

56. Raub, *supra* note 5, at 1039.



foreign lawyers to partner with domestic lawyers to prosecute and defend the cases.”<sup>57</sup> Under UNMIK Regulation 2000/64, the Special Representative of the Secretary-General obtained the authority to appoint an international prosecutor, judge, or panel of judges, upon the request of a prosecutor, an accused, or defense counsel, resulting in the creation of a Regulation 64 Panel.<sup>58</sup> Thus, the Kosovar Regulation 64 Panels are unlike the hybrid tribunals because they do not derive their authority from treaty law or from Security Council resolutions; instead, their authority is based on UNMIK regulations.<sup>59</sup> These Panels are similar to other hybrid tribunals because they apply a blend of international and domestic law and because international judges and prosecutors have worked alongside Kosovar Albanian colleagues. The Panels have been overseen by UNMIK authorities and are accordingly financed.<sup>60</sup> As of 2002, the Kosovo Panels have held seventeen war crimes trials.<sup>61</sup> Some have argued that the Kosovo Regulation 64 Panels represent a somewhat successful model of hybrid tribunals: “The presence of international judges imparted an air of credibility to these trials that would have been missing without international involvement while at least some Kosovar judges have benefited from exposure to their international counterparts.”<sup>62</sup>

### C. *Internationally-Supported Domestic Chambers*

In addition to hybrid tribunals, which reflect a *mélange* of international law and domestic law, another model of delivering justice for war crimes and other types of atrocities has developed over the last decade: Internationally-supported domestic chambers or “internationalized” domestic tribunals. Examples include the Iraqi Special Court, the Bosnian War Chamber, and the recent Somali piracy prosecutions in Kenya and the Seychelles.

In order to prosecute Saddam Hussein, the deposed leader of Iraq, as well as other members of his regime, the Iraqi Special Tribunal was established in 2003 through an Iraqi law approved by the United States.<sup>63</sup>

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57. *Id.* at 1026.

58. OXFORD, INTERNATIONALIZED CRIMINAL COURTS: SIERRA LEONE, EAST TIMOR, KOSOVO, AND CAMBODIA 34, (Cesare P. R. Romano, Andre Nollkaemper, & Jann K. Kleffner eds., 2004).

59. Raub, *supra* note 5, at 1027.

60. *Id.* at 1027–28.

61. Dickinson, *supra* note 1, at 297.

62. Raub, *supra* note 5, at 1028.

63. See Cherif M. Bassiouni, *Post-Conflict Justice in Iraq: An Appraisal of the Iraq Special Tribunal*, 38 CORNELL INT’L L. J. 327, 335–36 (2005).

Located in Baghdad, the Court is a domestic tribunal that employs domestic judges, prosecutors, defense attorneys, and applies Iraqi law.<sup>64</sup> The tribunal was heavily supported by the international community, particularly the United States, which provided various forms of support and training for the Court's personnel.<sup>65</sup> Thus, this tribunal is a model of an "internationalized" domestic court: A justice mechanism embedded in the domestic system of the relevant nation, aided by various international organizations and authorities in order to enhance its effectiveness.<sup>66</sup> The Iraqi Special Tribunal successfully convicted Saddam Hussein, and in addition, has prosecuted several other members of the deposed Ba'athist regime.<sup>67</sup>

The Bosnian War Chamber is a specialized domestic chamber that handles various war crimes cases, either handed down by the ICTY as part of its completion strategy, or investigated on its own.<sup>68</sup> These cases stem from the civil war in the former Yugoslavia during the 1990s.<sup>69</sup> The Chamber is a domestic tribunal within the Bosnian judicial system; it applies local law and it is located in capital city of Sarajevo.<sup>70</sup> The Chamber, however, employs a mix of international staff, as well as local Bosnian Serbs, Croats, and Muslims.<sup>71</sup> Like the Iraqi Special Tribunal, the Bosnian War Chamber has benefitted from generous international support, and its processes have been "internationalized" to ensure procedural quality of prosecutions and to guarantee the delivery of justice pursuant to international standards.<sup>72</sup>

Finally, more recent examples of internationalized domestic chambers include special piracy courts in Kenya and the Seychelles, where captured Somali pirates are being transferred for prosecution under the national

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64. See generally, *id* at 346.

65. *Id.* at 341 (discussing the role of American jurists in the Iraqi Special Tribunal).

66. See generally, *id.* at 346.

67. Saddam Hussein Sentenced to Death, BBC NEWS [http://news.bbc.co.uk/2/hi/middle\\_east/6117910.stm](http://news.bbc.co.uk/2/hi/middle_east/6117910.stm) (last updated on Nov. 5 2006).

68. Tolbert, *supra* note 1, at 1294 (noting that the ICTY has transferred a number of low and mid-level cases to national courts and that most of these cases went to the Bosnian war chamber, which is a national hybrid court).

69. *Id.* at 1285.

70. See generally, Institute for War and Peace Reporting, Introduction to Balkan War Crimes Court, available at <http://iwpr.net/programme/international-justice-icty/introduction-balkan-war-crimes-courts> (last visited Feb. 23, 2013).

71. Curry, *supra* note 18, at 18.

72. *Id.* (noting that the Bosnian war crimes trials have been monitored by the Organization for Security and Cooperation in Europe, and that the experiment was successful).

systems of these two countries.<sup>73</sup> A piracy chamber has developed in Mombasa, Kenya, where several successful prosecutions have taken place since 2006.<sup>74</sup> Kenyan piracy courts are domestic; they also employ Kenyan lawyers, apply Kenyan law, and are located in this host nation.<sup>75</sup> In the Seychelles, piracy prosecutions have been taking place since 2009 in the Supreme Court located in the capital city of Victoria.<sup>76</sup> The Seychellois prosecutions are conducted using local law by Seychellois judges, prosecutors, and defense attorneys.<sup>77</sup> The piracy prosecutions in both Kenya and the Seychelles have benefited from international assistance by the United Nations Office of Drugs and Crime, which has provided both monetary and logistical support, as well as personnel in the form of “loaned” prosecutors, defense attorneys, translators, and interpreters.<sup>78</sup> In this sense, piracy prosecutions in Kenya and the Seychelles, although conducted in national courts, have been “internationalized,” due to support and involvement by the United Nations.

Hybrid tribunals and internationalized domestic chambers have supplemented available mechanisms of justice in international criminal law, specifically international tribunals.<sup>79</sup> The Nuremberg model of international war crimes prosecutions has been appended in modern times with innovative prosecutorial models, which mix international and domestic law and may be oriented toward both restoring justice and rebuilding peace in war-torn areas.<sup>80</sup>

### III. THE FUTURE: A MÉLANGE OF INTERNATIONAL, *AD HOC* HYBRID, AND “INTERNATIONALIZED” DOMESTIC TRIBUNALS

Is the ICC a panacea for international criminal justice, or does the future hold room and space for other kinds of tribunals, including *ad hoc* hybrid courts and internationalized domestic chambers? The latter is most likely true.

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73. For a general discussion of piracy prosecutions in Kenya and the Seychelles, see Milena Sterio, *Piracy Off the Coast of Somalia: The Argument for Pirate Prosecutions in the National Courts of Kenya, The Seychelles, and Mauritius*, 4 AMSTERDAM LAW FORUM 104 (2012).

74. *Id.* at 112.

75. *See generally, id.* at 112–13.

76. *Id.* at 115.

77. *Id.* at 115–16.

78. UNODC and Piracy, available at <http://www.unodc.org/unodc/en/piracy/index.html?ref=menuaside> (last visited Feb 18, 2013).

79. *See generally, id.*

80. *See generally, Tolbert, supra* note 1.

Each of the three models of delivering international justice offer both advantages and disadvantages. International tribunals provide a mode of delivering true international justice based on international law and carried out by the most experienced and influential international lawyers.<sup>81</sup> Their general deterrent effect, impact, and legacy are potentially tremendous, and their case law may form the basis for developing international criminal law in the future.<sup>82</sup> International tribunals, however, have limited resources but demand extremely expensive prosecutions; typically, they are structured to prosecute only those who bear the highest level of responsibility in any conflict, and they may be divorced from the reality of any situation that they are investigating because of their physical distance from the conflict at hand and their disconnect with local law.<sup>83</sup> Moreover, international tribunals generally only have jurisdiction over three international offenses: genocide, crimes against humanity, and war crimes.<sup>84</sup> Thus, these tribunals may not be able to investigate other important crimes which may have taken place during a conflict, further contributing to a perception of disconnect between the tribunal and the affected country.<sup>85</sup> Finally, international tribunals are typically not concerned with rebuilding civil society in war-ravaged countries that they investigate; instead, their focus is on prosecuting the offenders and satisfying the goals of international justice.<sup>86</sup> Particularly with the ICC, scholars have argued that in some instances, its investigations have undermined the stability and peace-building processes in target nations.<sup>87</sup> Many have argued that the ICTY and ICTR have had a very limited influence on the rebuilding of stability and

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81. See generally, International War Crimes Tribunals, Beyond Intractability, July 2003 available at <http://www.beyondintractability.org/bi-essay/int-war-crime-tribunals> (last visited on Feb. 23, 2013).

82. Leiber Code, available at <http://www.liebercode.org/2012/03/precedent-and-stare-decisis-at.html> (last visited on Feb. 23, 2013) (noting the potential for "stare decises" at the international tribunals); see also, International Criminal Law Developments in the Case Law of the ICTY (Gideon Boas & William A. Schabas eds., 2003).

83. See, e.g., Tolbert, *supra* note 1, at 1287 (noting that international tribunals are "expensive and slow and have no real connection to the affected communities, because they are far away from the locations where the crimes have been committed;" noting also that "their impact on, and support of, the development of local judicial infrastructure has been limited.").

84. *Id.* at 1286.

85. See generally, *id.* at 1287.

86. *Id.* at 1291 (describing the "peace versus justice" debate as it relates to international tribunals).

87. *Id.*

society in the former Yugoslavia and Rwanda.<sup>88</sup> Thus, while offering certain advantages, international tribunals present challenges and insufficiencies in terms of delivering justice for all on a global scale.

Hybrid tribunals offer advantages inherent to their approach of integrating aspects of international prosecutions with national justice systems.<sup>89</sup> Typically, hybrid tribunals are located in the host nations, and therefore can function in tune with the needs of the local society.<sup>90</sup> They often contribute toward the growth of the local judiciary and the redevelopment of the national criminal justice system.<sup>91</sup> Similarly, they often provide the host nation with much-needed infrastructure, such as new buildings, courthouses, and detention facilities.<sup>92</sup> Hybrid tribunals are less expensive than international tribunals, they can arguably prosecute more offenders, and they can tailor their statutes to existing conflicts by incorporating country-specific offenses.<sup>93</sup> Hybrid tribunals, however, are not immune to criticism. They may lack in legacy and standing when compared to international tribunals, in particular the ICC.<sup>94</sup> They may deliver justice at a sub-international level, and their focus on rebuilding civil society may detract them from focusing on the actual prosecutions.<sup>95</sup> They may be inadequately funded and experience internal tension due to conflicts between the international and domestic court personnel.<sup>96</sup>

Finally, internationalized domestic chambers offer advantages such as the ability to prosecute lower-level offenders, handling a large volume of cases, contributing toward rebuilding the local judiciary, and existing in sync with the needs of the local population.<sup>97</sup> Such chambers typically deliver justice at much lower costs and at much higher speed compared to

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88. See generally, Ivana Nizich, *International Tribunals and Their Ability to Provide Adequate Justice: Lessons from the Yugoslav Tribunal*, 7 ILSA J. INT'L & COMP. L. 353 (2001).

89. See generally, Dickinson, *supra* note 1.

90. *Id.*

91. *Id.*

92. *Id.*

93. See Raub, *supra* note 5, at 1023 (noting that the budget of the ICTY for 2009-2010 was approximately \$173.7 million per year, and that the budget of the ICTR for the same year was approximately \$133.7 million per year); Dickinson, *supra* note 1, at 1025 (noting that the Special Court for Sierra Leone had a budget of approximately \$89 million per year); see also Tolbert, *supra* note 1, at 1287 (noting that hybrid tribunals have operated at lower cost than international tribunals because the former employ national staff in lower-cost environments).

94. See generally, Raub, *supra* note 5.

95. *Id.* at 1025.

96. See, e.g., Dickinson, *supra* note 1, at 300-05 (discussing three general problems related to hybrid tribunals: legitimacy; capacity-building; and norm-penetration).

97. See generally, *Id.* at 308-09.

international and hybrid tribunals. Yet, such chambers raise challenging issues as well. Some have questioned their ability to implement prosecutions that are adequate under the standards of international justice. For example, European nations withdrew their support for the Iraqi Special Court because they argued that its adoption of the death penalty was contrary to human rights law.<sup>98</sup>

In addition, domestic chambers can be prone to corruption. In Kenya, the UNODC donated millions of dollars to support piracy prosecutions in Mombasa, but allegations surfaced that Kenyan politicians mishandled the money and greedily demanded more.<sup>99</sup> Domestic chambers do not necessarily contribute toward the development of international criminal law because they function within domestic legal systems and apply purely domestic law. Some have argued that the international community, instead of supporting domestic prosecutions, should contribute directly to the rebuilding of these war-torn areas by developing the local economy, infrastructure, and educational institutions.<sup>100</sup>

Ultimately, the model of justice that should be employed for a given country or region depends on the circumstances of each situation. While the ICC may be the best prosecutorial option for high-profile conflicts and offenders, such as genocide or crimes against humanity, other conflicts may necessitate the creation of *ad hoc* international tribunals, such as the ICTY and ICTR, or *ad hoc* hybrid tribunals, like the Special Court for Sierra Leone, the ECCC, the East Timor, or Kosovo courts. Other conflicts may warrant the creation of a specialized and internationally supported domestic war crimes chamber, such as in the case of the Iraqi Special Court, the Bosnian War Crimes Chamber, and the Somali piracy prosecutions in the national courts of Kenya and the Seychelles. In light of the different demands of each conflict, is it unlikely that the existence of the ICC will preclude the establishment of other types of hybrid or internationalized domestic tribunals.<sup>101</sup>

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98. Neil MacDonald, *Iraq Tribunal Struggles for Credibility*, FT.COM, June 10, 2005, available at <http://www.ft.com/intl/cms/s/1/fbc3ae76-d94d-11d9-8403-00000e2511c8.html#axzz2LjuFZTJ9> (last visited Feb. 23, 2013.)

99. Sterio, *supra* note 73, at 113–14 (discussing alleged corruption issues in Kenya).

100. See e.g., Dickinson, *supra* note 1, at 308 (describing that some critics have labeled hybrid courts as “a mere second best alternative to international courts.”).

101. *Id.* at 308–10 (outlining instances in which the establishment of hybrid courts may be warranted).

#### IV. CONCLUSION

The goals of international justice are broad and necessitate different approaches for different situations. While the creation of the ICC may have been a welcomed development in the field of international criminal law, this Tribunal should not prevent the possible establishment of other future tribunals necessary for various types of conflicts, crimes, and offenders.